

# Idaho Industrial Commission

Effective as Amended February 1, 2001

## **RULES OF APPELLATE PRACTICE AND PROCEDURE UNDER THE IDAHO EMPLOYMENT SECURITY LAW**

### **INTRODUCTION**

By virtue of the authority vested in the Industrial Commission pursuant to Idaho Code §§ [72-508](#) and [72-1368\(7\)](#), the Industrial Commission of the State of Idaho does hereby adopt the following rules of procedure governing judicial matters under its jurisdiction as provided by the Idaho Employment Security Law. These rules shall repeal those rules previously adopted by the Commission on July 1, 1998.

Where reference is made in these Rules to "the Commission," that term shall include the full Commission or members thereof and any Referee to whom the Commission has referred all or any part of the matter.

*COMMENT: - Idaho Code § [72-508](#) provides that the Commission shall have authority to promulgate and adopt reasonable rules and regulations involving judicial matters, the provisions of Chapter 52, Title 67, Idaho Code, notwithstanding. Idaho Code § [72-1368\(7\)](#), provides that the Commission shall decide all claims for review of decisions of appeals examiners of the Department of Commerce & Labor, filed by any interested party in accordance with the Commission's own rules of procedure.*

## **RULE 1**

### ***TITLE AND SCOPE OF COVERAGE***

- These rules may be known and cited as the Rules of Appellate Practice and Procedure Under the Idaho Employment Security Law, or abbreviated R.A.P.P. and they shall apply in all disputed appeals coming under the Commission's jurisdiction. Only an interested party to a Decision of an Appeals Examiner of the Department of Commerce & Labor may file an appeal to the Commission, and the Commission shall make such Order or Ruling as allowed by Idaho Code § [72-1368\(7\)](#).

## **RULE 2**

### **DEFINITIONS**

- "Appeal" means a writing, signed by an interested party or legal representative, containing words that, by fair interpretation, present a claim for review. To be valid, an appeal must be filed by delivering it to the Idaho Industrial Commission, 317 Main Street, Boise, Idaho, or by mailing it to the Industrial Commission, P.O. Box 83720, Boise, Idaho, 83720-0041. If personally delivered, the appeal must be received by 5:00 p.m. on the last day to appeal. Appeals delivered to any other Industrial Commission office, appeals delivered or sent to any Department of Commerce & Labor office, and appeals that are not signed by an interested party or his, her or its attorney are not considered valid appeals.
- "Interested party" is defined by Idaho Code § [72-1323](#) and includes, with respect to a claim for benefits, the claimant, the claimant's last regular employer, the covered employer whose account is chargeable for experience rating purposes, the cost reimbursement employer who may be billed for any portion of benefits claimed, and the Director of the Department of Commerce & Labor or a duly authorized representative of any of them. With respect to proceedings involving employer liability, "interested party" means the employer and the Director or a duly authorized representative of either of them.
- "Service" means mailing or personally delivering a copy of the document to each interested party. Service by mail is deemed complete upon the date of mailing to the party's last- known address.
- "Filing" means personally delivering a document to the Industrial Commission at 317 Main Street, Boise, Idaho, mailing it to the Industrial Commission, P.O. Box 83720, Boise, Idaho, 83720-0041, or transmitted by facsimile to 208-334-2321. Appeals delivered by any means to any other Industrial Commission office will not be considered filed. Appeals sent to the Department of Commerce & Labor will not be considered filed.
  - If personally delivered, the appeal must be presented to the Industrial Commission during business hours and received no later than 5:00 p.m. on the last day to appeal. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing.
  - If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark on the envelope containing the appeal.
  - Appeals transmitted by facsimile to the Commission and received by 5:00 p.m. on a business day shall be deemed filed on that day. An appeal transmitted by facsimile and received by the Commission on a weekend, holiday, or after 5:00 p.m. on a business day shall be deemed filed on the next business day.

### **RULE 3**

#### **FILING APPEALS**

- **FORM** - An appeal shall be in writing, signed by an interested party or legal representative, and shall contain words that, by fair interpretation, present a claim for review.
- **TIMELINESS** - The appeal must be filed within fourteen (14) days of the service by mail or otherwise of a final decision of the appeals examiner. An appeal not filed within such time will be dismissed as untimely. Service by mail is deemed complete upon the date of mailing to the party's last-known address. If a timely request or motion for rehearing is filed with the Department of Commerce & Labor Appeals Bureau, the fourteen-day period does not begin to run until service by mail or otherwise of a final order issued by the Bureau.
- **NOTIFICATION** - When a claim for review or appeal of a decision of an appeals examiner is filed with the Industrial Commission, the Commission shall notify by mail all interested parties, who had notice of the decision of the appeals examiner, by mailing or delivering to said interested parties a copy of the claim for review.
- **COPIES OF CORRESPONDENCE TO ALL INTERESTED PARTIES** - Any party sending correspondence to the Commission concerning an appeal shall serve copies on all interested parties as well.
- **DISCOVERY NOT PERMITTED** - No discovery procedures as contemplated by the Idaho Rules of Civil Procedure are permitted.
- **TRANSCRIPTS** - Pursuant to Idaho Code § [72-1368\(6\)](#), the Commission will prepare and serve on all interested parties a copy of the tape recording of the appeals examiner's hearing in each case appealed to the Commission. The form of the copy, either audio tape or paper transcript, will be at the discretion of the Commission.
- **CHANGE OF ADDRESS** - Any interested party shall promptly notify the Commission in writing of any change of mailing address.
- **COMMENTS:** *Subsection (A) clarifies that appeals of decisions of hearing examiners must be sent to the Industrial Commission, not the Department of Commerce & Labor. Additionally, if a representative makes the appeal on behalf of the party, the representative must be legally authorized to represent the party in Idaho. See RULE 8. Representation of Parties Before Commission.*
- *Subsection (B) derives from Idaho Code § [72-1368\(5\)](#) and (6), which provide that unless an interested party shall within fourteen (14) days after service of the decision of the appeals examiner file a claim for review or unless an application or motion is made for a rehearing of such decision, the decision of the appeals examiner shall become final. The Idaho Supreme Court has held that it is mandatory and jurisdictional that appeals be filed within the statutory time period. There is no provision for granting relief for extenuating circumstances. Fouste v. Department of Labor, 97 Idaho 162, 540 P.2d 1341 (1975).*
- *Subsection (D) contemplates the Department of Commerce & Labor as an interested party.*
- *Subsection (E) stems from a recognition that time is of the essence in Unemployment Insurance Act proceedings.*

- *Subsection (F) invokes the Commission's authority to require a transcript of a proceeding, pursuant to Idaho Code § [72-1368\(6\)](#), so that the Commission may discharge its obligation to rule on appeals on the basis of the record of proceedings before the appeals examiner, as mandated by § [72-1368\(7\)](#) and as a due process safeguard.*
- *Subsection (G) service by mail is deemed complete on the date of mailing to the party's last-known address. Therefore, it is imperative that the Commission be kept apprised of current mailing address information.*

## **RULE 4**

### **BRIEFS**

- **TIME FOR FILING** - The Commission may, upon request of an interested party filed within seven (7) days from the date of mailing of the record, grant all parties time in which to submit argument by written briefs. Unless there appears good cause for establishing an alternative briefing schedule and the Commission so orders, the party requesting the right to submit a brief shall file an opening brief no later than seven (7) days after notice of the Commission's decision to grant the request to allow the filing of the opening brief. A responding brief may be filed by an interested party. Responding briefs shall be filed and served seven (7) days from the date of receipt of the opening brief. As continuances are not favored, the Commission will not grant requests for additional time for filing briefs unless made by motion within the original time allowed and upon a showing of good cause.
- **CITATIONS AND SUPPORT REQUIRED** - Written argument must be based upon the evidence established in the evidentiary record. Whenever a party refers to hearing testimony, whether by quoting or paraphrasing, such reference must include a citation to the page or pages in the transcript, whenever practicable, where the hearing testimony can be found. If the testimony is not transcribed, this requirement is waived. Whenever a party refers to evidence reflected in an exhibit, such reference must include a citation to the exhibit number. Whenever a party asserts a point of law, such assertion must be supported by citation to appropriate legal authority. Whenever a brief does not contain the citations and support required by this rule, it may be subject to a motion to strike by any party or may be stricken by the Commission on its own motion.
- **LENGTH** - No brief in excess of 30 pages, exclusive of any addendum or exhibit, shall be filed without the Commission's prior consent. A brief of 20 pages or more shall contain a table of contents.
- **COMMENT:** *Pro se refers to those parties who represent themselves before the Commission. Such parties are encouraged to comply with the citations' requirements. A pro se brief that does not strictly comply with the citation requirements will be deemed to have complied as long as the pro se party appears to have made a good faith effort to apprise the Commission of the facts and law on which he or she relies.*

## **RULE 5**

### **EX PARTE COMMUNICATIONS**

- **EX PARTE COMMUNICATIONS PROHIBITED** - From the time an appeal is filed until it becomes final under Idaho Code § 72-1368, no person involved in the appeal shall communicate, either directly or indirectly, or shall discuss with a Commissioner or a Referee the merits of any matter in which an appeal is pending unless all parties or their attorneys are present. No person shall correspond with any Commissioner or Referee, regarding any such matters unless service of a copy of the correspondence is made on all parties and proof of service is filed. No person acting on behalf of any party shall attempt to influence the disposition of an appeal through such communications. No Referee shall knowingly cause a communication prohibited by this section to be made. If a communication is received in violation of this rule, the person receiving the communication shall place in the record all such written communications or a memorandum stating the substance of all such communications, and direct that a full copy of the communication be sent to all other interested parties to the appeal and allow an appropriate time for such parties to respond.
- *COMMENT: Subsection(A) recognizes that Commissioners and Referees are bound by the Code of Judicial Conduct, including the rule against ex parte contacts contained in Canon 3. All practitioners before the Commission are similarly constrained from ex parte contacts by Rule 3.5 of the Idaho Rules of Professional Conduct.*
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## **RULE 6**

### **COMMISSION HEARINGS**

- **SEVEN (7) DAYS TO REQUEST HEARING** - Any interested party shall have seven (7) days from the date of mailing of the record to file with the Commission a written request for a hearing before the Commission.
- **FORM OF HEARING REQUEST** - The party or parties requesting a hearing shall submit the following information with the request for hearing:
  - the reason for requesting the hearing;
  - whether the party desires to present evidence to the Industrial Commission in addition to that presented to the appeals examiner;
  - a description of the evidence the party desires to present;
  - an explanation of why the proposed evidence is relevant to the issues before the Industrial Commission; and
  - reason why the proposed evidence was not presented before the examiner.
- **STANDARD OF REVIEW FOR HEARING REQUEST; NOTICE OF COMMISSION HEARING; LIMITATIONS ON EVIDENCE, WITNESSES PRESENTED AT HEARING** - Upon receipt of a timely request or receipt of the record of proceedings before the appeals examiner and expiration of the time allowed for interested parties to request a hearing, the Commission shall review the matter to determine whether the interests of justice require the presentation of additional evidence. If the Commission determines, in its discretion, to grant a request for hearing to permit receipt of additional evidence, all parties shall be promptly notified. The commission may limit the evidence to be presented and may specify the witnesses who are permitted to testify. The Commission may also refer the matter back to the Appeals Examiner for further proceedings.
- **TEN (10) DAY NOTICE OF HEARING REQUIRED; TRANSCRIPT OF HEARING** - If the Commission allows a hearing before the Commission, it shall give at least ten (10) days written notice of the time and place of hearing and of the issues to be heard, either by personal service or registered or certified mail. A stenographic or machine-recorded transcription of any testimony presented at any hearing shall be taken.
- **HEARING NOT REQUESTED OR HEARING REQUEST DENIED** - If no hearing is requested, or a request for hearing is denied, the Commission shall decide the claim for review upon the record of proceeding before the appeals examiner. The Commission may request briefs based on the evidentiary record in lieu of granting a hearing.



## **RULE 7**

### **EVIDENCE AND WITNESSES**

- **RECORD OF EVIDENCE; WRITTEN ARGUMENT** - The record of evidence before the Commission shall consist of either the tape recording or the transcript of any hearing conducted by the appeals examiner, together with the exhibits admitted into evidence by the Appeals Examiner and the testimony and exhibits presented to the Industrial Commission at its hearing, if one is held. The Commission may also consider written argument submitted by any interested party. Written argument must be based upon evidence established in the record. Hearsay evidence, standing alone, is not sufficient to support findings in an administrative hearing.
- **WITNESS FEES AND MILEAGE TENDERED ON REQUEST; AMOUNT OF WITNESS FEES AND MILEAGE; SERVICE OF SUBPOENAS** - No person shall be required to attend as a witness in any proceeding before the Industrial Commission unless lawful mileage and a witness fee for one day's attendance shall be first tendered upon request. Witness fees and mileage shall be in the amount provided by law for a witness in the district courts of this state and shall be paid by the party on whose behalf the witness is subpoenaed. Service of subpoenas shall be accomplished in the manner provided by law for the service of subpoenas in civil proceedings in the district courts of this state.
- *COMMENT: Subsection (A) is based on the Idaho Supreme Court's holding that hearsay evidence--standing alone--is not sufficient to support the findings in an administrative hearing. Application of Citizens Utilities Company, 82 Idaho 208, 351 P.2d 487 (1960).*

## **RULE 8**

### ***REPRESENTATION OF PARTIES BEFORE COMMISSION***

- **NATURAL PERSONS** - In all matters, any party who is a natural person may appear in person or by an attorney. A claimant may be represented by an attorney or other duly authorized agent.
- **EMPLOYERS** - Employers who are natural persons may represent themselves or be represented by an attorney. Employers who are partnerships shall be represented by a partner or by an attorney. Employers who are corporations or associations must be represented by an attorney.
- **LICENSED IDAHO ATTORNEY** - All attorneys representing parties before the Commission shall be licensed to practice and actively practicing law in the state of Idaho. Attorneys representing parties before the Commission shall file with the Commission a Notice of Appearance.
- **FILING A NOTICE OF APPEAL** - Any party may file a notice of appeal on its own behalf. In the case of corporations, a corporate officer may file a notice of appeal on behalf of the corporation. Appeals submitted by employer representatives, who are not attorneys, will not be considered.
- *COMMENT: Subsection (A) allows claimants to choose "other duly authorized agent[s]" but does not extend this to employers. See Idaho Code § [72-1375\(2\)](#). Therefore, an employer representative who is not a licensed attorney in the State of Idaho may not represent an employer. Representation of another person before a public agency or service commission constitutes the practice of law where the proceedings before those tribunals are held for purposes of adjudicating the legal rights or duties of a party. Kyle v. Beco. Corp., 109 Idaho 267, 707 P.2d 378 (1985), Idaho State Bar Association v. Idaho Public Utilities Commission, 102 Idaho 672, 637 P.2d 1168 (1981), Weston v. Gritman Memorial Hospital, 99 Idaho 717, 587 P.2d 1252 (1978).*

## **RULE 9**

### **CHANGE OF ATTORNEY/ATTORNEY WITHDRAWAL**

- **SUBSTITUTION OF COUNSEL** - The attorney of record for a party to an appeal may be changed or a new attorney substituted by notice to the Commission and to all parties, which is signed by both the withdrawing attorney and the new attorney, without first obtaining leave of the Commission. If a new attorney appears in an appeal, the appeal shall proceed without delay, unless the Commission finds good cause for delay of the proceedings.
- **LEAVE TO WITHDRAW** - Except as provided in subsection (A) above, or by stipulation between an attorney and the client and upon order of the Commission approving said stipulation, no attorney may withdraw as an attorney of record without first obtaining leave and order of the Commission upon a motion, supported by affidavit, filed with the Commission and serviced on all parties to the appeal, including the client. The Commission may grant leave to withdraw as counsel of record for good cause and upon such conditions as will prevent any delay in determination and disposition of the pending appeal. Notwithstanding this provision, a claimant who intends to terminate the service of his or her attorney of record and to proceed pro se may do so by giving written notice to the Commission, the claimant's attorney of record, and all parties that the claimant will no longer be represented by counsel and will represent himself or herself.
- **NOTICE TO CLIENT OF WITHDRAWAL** - If an attorney is granted leave to withdraw, the Commission shall enter an order permitting the attorney to withdraw. After the order is entered, the withdrawing attorney shall promptly serve a copy of the order upon the attorney's former client and file proof of service of the same with the Commission. The withdrawing attorney shall make such service upon his or her client as is most likely to give actual notice to the client. Such service may be made by personal service or by certified mail to the client's last-known address. Service by certified mail shall be complete upon mailing. Upon the entry of an order granting leave to an attorney to withdraw from an appeal, no further proceedings can be had in that appeal which will affect the rights of the client of the withdrawing attorney for a period of 21 days after service of the order of withdrawal.
- **WITHDRAWAL UPON DEATH, EXTENDED ILLNESS, ABSENCE, SUSPENSION OR DISBARMENT OF ATTORNEY** - In the event of the death, extended illness, extended absence, suspension or disbarment from the practice of law of an attorney of record in an appeal, if such attorney has not indicated on his or her appearance that the attorney is associated with a partnership, firm, corporation or other attorneys in the appeal, then no further proceedings can be had in such appeal that will affect the rights of the party represented by such attorney for a period of 21 days after the order has been served as provided in this rule.
- *COMMENTS: Subsection (A) allows a substitution of counsel without leave of the Commission where the party is not prejudiced*
- *Subsection (B) addresses attorney withdrawal and requires either a stipulation approved by the Commission or a motion thereon prior to withdrawal.*
- *Subsection (C) sets forth the withdrawing attorney's responsibilities to notify the former client. It prohibits further proceedings for three weeks to allow the client reasonable time to retain new counsel.*
- *Subsection (D) addresses what may be considered involuntary attorney withdrawal and prohibits further proceedings for three weeks to allow the client reasonable time to retain new counsel.*

## **RULE 10**

### **COMMISSION PROCEDURE**

- MATTER MAY BE HEARD BY COMMISSION OR ASSIGNED TO REFEREE; POWER TO HEAR CLAIMS FOR REVIEW, SUBPOENA WITNESSES, ADMINISTER OATHS, TAKE TESTIMONY, ISSUE SUBPOENA DUCES TECUM, EXAMINE BOOKS AND RECORDS; ENFORCEMENT PROCEEDINGS - Any matter upon which a claim for review has been filed with the Commission may be assigned, by the Commission, to a single Commissioner or to a Referee, or the matter may be heard by the Commission. The Commission or any member thereof, or any Referee appointed by the Commission, shall have the power to subpoena witnesses, administer oaths, take testimony, issue subpoena duces tecum, and to examine such of the books and records of the parties to proceeding as relates to the question in dispute. Proceedings for enforcement shall be as provided in Idaho Code § § [72-1338](#) and [72-1339](#).
- PRE-HEARING CONFERENCE - The Commission, or any Commissioner or Referee to whom a case is assigned, may direct the parties to appear for a pre-hearing conference to consider any matters that may aid in the disposition of a case.
- ORDER OF TESTIMONY - At any hearing, the party requesting review of the decision of the appeals examiner may be called upon to present its evidence first. The respondents may then present their evidence. The parties may then respectively offer rebuttal evidence. The parties may also request the opportunity to submit written arguments following the hearing.
- REVIEW BY COMMISSION OF COMMISSIONER'S OR REFEREE'S FINDING, ORDER OR DECISION; ADOPTION OF FINDING, ORDER OR DECISION BY COMMISSION - If the matter is assigned to a single Commissioner or Referee, he or she shall make recommended Findings of Fact and Conclusions of Law, and the Proceedings shall then be submitted to the Commission for its review. Every finding, order, or decision of a single Commissioner or Referee, when approved and confirmed by the Commission and ordered filed in its office, shall be deemed to be the final order or decision of the Commission.
- RECONSIDERATION - Motions for reconsideration shall be in writing and specifically identify the legal justification upon which the motion is based. The request for reconsideration must be filed within twenty (20) days from the date of filing of the Commission's decision and order, and served on all interested parties.
- *COMMENT: A request for reconsideration is a request that the Commission reexamine its decision in light of additional legal arguments, a change in law, a misinterpretation of law, or an argument or aspect of the case that was overlooked. A request for reconsideration that is based on a legal argument which could have been raised earlier in the proceeding will not ordinarily be granted. The intent is to provide a definite format for legal critique but discourage reactionary and insubstantial motions when a party merely wants the Commission to "think it over again."*

## **RULE 11**

### ***REMANDS***

- STANDARDS FOR REMANDING CASES - The Commission may remand cases to the Department of Commerce & Labor in the following situations:
  - Where the decision below does not set forth specific findings of fact;
  - Where a party did not appear for the Department of Commerce & Labor hearing and has established good cause for the absence;
  - Where the Commission grants a new hearing request pursuant to [RULE 6\(C\)](#); or
  - Where other good cause to remand exists.
- PERFECTING NEW APPEAL UPON REMAND - When a case is remanded, the Commission no longer has jurisdiction; therefore, a new request for Commission review, if desired, shall be filed by an aggrieved party within fourteen (14) days after the date of service of the Appeals Bureau's decision on remand.

**RULE 12**  
*SANCTIONS*

- VIOLATION OF RULES - The Commission retains power to impose appropriate sanctions for any violation or abuse of its rules.